

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

BARBARA ANN NICHOLSON, :

Plaintiff, : CIVIL ACTION NO.
v. : 1:10-cv-00795-JEC-AJB
ONEWEST BANK, :
Defendant. :

POST HEARING BRIEF

Plaintiff respectfully wishes to address the issues raised by the Court at yesterday's hearing and requests permission to do so.

The near unanimous authority is that there is no preclusion bar as a result of an order for relief from stay. See Grella v. Salem Five Cent Sav. Bank, 42 F.3d 26, 35 (1st Cir. 1994); D-1 Enterprise, Inc. v. Commercial State Bank, 864 F.2d 36 (5th Cir. 1989); In re Torco Equip. Co., 65 B.R. 353, 355 (W.D. Ky. 1986) (Bank); In re Martin, 2006 WL 3086361 (E.D. Va. 2006) (Bank) at fn. 4; In re Suggs, 377 B.R. 198 (8th Cir. BAP 2007); In re Ken Carpenter R.V. Inc., 177 B.R. 754 (D.N.H. 1995) (Bank). See generally In re Hurst, 409 B.R. 79, 83 (D. Md. 2009) (Bank).

The standards for posting a bond under Fed. R. Civ. Pro. 65 are set out in Corrigan Dispatch Co. v. Casa Guzman, 569 F.2d 300, 302-303 (5th Cir.

1978) (The Court “may elect to require no security at all.”); City of Atlanta v. MARTA, 636 F.2d 1084, 1094 (5th Cir. 1981).

Respectfully submitted,

/s/ Ralph Goldberg
Ralph Goldberg
Ga. Bar No. 299475
Attorney for Plaintiff

Goldberg & Cuvillier, P.C.
755 Commerce Drive, Ste. 600
Decatur, GA 30030
(404) 378-7700
(404) 378-7708 FAX

CERTIFICATE OF SERVICE

This is to certify that on this day counsel of record for the opposing party in the foregoing matter was served with a copy of this document by depositing in the United States Mail copies of the same in properly addressed envelopes with adequate postage thereon or by notification of electronic filing.

John Andrle
McCurdy & Candler, L.L.C.
250 E. Ponce De Leon Avenue, Suite 600
Decatur, GA 30031

This 20th day of April, 2010

/s/ Ralph Goldberg
Ralph Goldberg
Attorney for Plaintiff

Goldberg & Cuvillier, P.C.
755 Commerce Drive, Ste. 600
Decatur, GA 30030
(404) 378-7700
(404) 378-7708 FAX